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IN THE
Supreme Court of the United States

NICHOL RODAK, JR., CLERK

OCTOBER TERM, 1975

No. 75-239

WILLIE STAMPS, JAMES ATKINSON, DARNEY STANFIELD, Individu-
ally and On Behalf of All Other Persons Similarly Situated,
Petitioners,

— v. —

DETROIT EDISON COMPANY, LOCAL 223 UTILITY WORKERS UNION
OF AMERICA, and LOCAL 17 INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS,
Respondents,

REPLY BRIEF OF PETITIONERS IN RESPONSE
TO BRIEF OF DETROIT EDISON COMPANY

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This brief is submitted in reply to
the brief of Detroit Edison Company
filed in response to the Petition of
plaintiffs Stamps, Atkinson and Stan-
field for a Writ of Certiorari. It is
addressed solely to arguments, first
raised by Edison in its brief in op-
position to the granting of the Pet-

ition, on one issue: the holding below that punitive damages are not authorized by the 1866 Civil Rights Act, 42 U.S.C. §§ 1981, 1988 (1970).

The decision below held that the District Court lacked power to award punitive damages in remedying violations of the 1866 Act. Accordingly, it did not decide the question,¹ raised by Edison there, whether the award should also be reversed because it was made by the Court sitting without a jury. Petition, pp. 98a-101a. Plaintiffs' Petition seeks review of the Court of Appeals' holding which, because it is predicated on the interdependence of their 1866 Act claim with their Title VII one,² seems to be squarely in conflict with this Court's decision in Johnson v. Railway Express Company, U.S. ___, 95 S.Ct. 1716 (May 19, 1975).

Were the Court of Appeals' Judgment to be vacated, the jury trial issue would then be presented to that Court, with whatever guidance this Court might choose to give. At no point have plaintiffs suggested that vacation of the Court of Appeals' judgment would rein-

1. Though it alluded to it. Petition, p. 99a.
2. Presumably it could not be sustained, and would not have been made, on any other predicate. See Johnson, supra, 95 S.Ct. at 1720.

state the District Court's punitive damages award.

Edison's brief is addressed solely to the jury-trial issue. Had the Court of Appeals' reversal been based instead on that ground, it would have remanded for proceedings consistent with its holding. Rogers v. Loether, 467 F.2d 1110 (7th Cir. 1972), affd. sub nom. Curtis v. Loether, 415 U.S. 189 (1974). But the holding below was not based on that ground and, accordingly, plaintiffs' Petition did not raise that issue.

Plaintiffs do not deny that this Court's decisions in Curtis, supra, and Johnson, supra, both rendered after the District Court's action in striking Edison's jury-trial demand, affect the grounds upon which the District Court acted. They do not seek to foreclose review of that action, either by this Court or by the Court of Appeals on remand. They respectfully submit, however, that the merits of that issue have no bearing upon the question of whether Certiorari should be granted to review the holding below that the 1866 Act, in the circumstances of this case, vested no authority in the District Court to make a punitive damages award -- with, or without, a jury.

Respectfully submitted,

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